UNITED STATES PATENT AND TRADEMARK OFFICE

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SHOOK, HARDY & BACON L.L.P.
(MICROSOFT CORPORATION)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

EXAMINER
POUNCIL, DARNELL A

ART UNIT	PAPER NUMBER
3688	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/805,873	PAYNE ET AL.
	Examiner	Art Unit	
	DARNELL POUNCIL	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>12 November 2009</u>.

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-12,14-32 and 36-46</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-12,14-32 and 36-46</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>02/23/2010, 11/12/2009, 09/09/2009</u>.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06)   **Office Action Summary**   Part of Paper No./Mail Date 20100128

DETAILED ACTION

Prosecution History Summary

1.   Claims 1-32 and 34 - 46 are currently pending in the instant application.

        Claims 1- 8, 10, 11, 25-27, 32, and 46, been amended and claim 13 has been cancelled

per Applicant's submission on November 12, 2009.

Response to Amendment

2.   In light of Applicant's submission filed November 12, 2009, the Examiner has withdrawn

the previous the 35 USC 112 rejections.

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making
> and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it
> pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode
> contemplated by the inventor of carrying out his invention.

4.   Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the

written description requirement. The claim(s) contains subject matter which was not described

in the specification in such a way as to reasonably convey to one skilled in the relevant art that

the inventor(s), at the time the application was filed, had possession of the claimed invention.

The examiner is unable to find support in regards to the added limitation of claim 16, specifically

"independent of a promotion or demotion of another listing." The applicant's claim 16 states the

performance measurement includes a click through rate and a context of the listing. The

applicant's specification page 9 lines 5-7 defines the context of the listing as the location of the

listing on the Web page 106, the amount of display area that the listing occupies, the neighboring

listings, and the display characteristics of the listing, e.g., the color, highlighting, animation.

5.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the
> subject matter which the applicant regards as his invention.

6.   Claim16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing

to particularly point out and distinctly claim the subject matter which applicant regards as the

invention. As stated above it is unclear how the promotion and demotion of a listing can be

independent of another listing, if the criteria for promotion/demotion include the context of the

listing, which includes neighboring listings (see page 9 of the specification).

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

8.   This application currently names joint inventors. In considering patentability of the

claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c)

and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9.   Claim1-32 and 34 - 46 rejected under 35 U.S.C. 103(a) as being unpatentable over

Kamangar et al. (US 2003/0046161) in view of McElfresh et al. (US 2003/0149938)

        With respect to **Claims 1**: Kamangar discloses a computer implemented method for

performed on a first computer for displaying on a screen coupled to a second computer

optimizing placement of search result listings displayed in a search Web page, the method

comprising:

        said first computer measuring an actual performance of a listing located in one or more

webpages a Web page containing a search term and a search result corresponding to the search

term, wherein the actual performance comprises at least one of click-through rate(CTR) and

context of the listing; [0014 & 0040] wherein the expected performance comprises at least one of

a user defined expected CTR and the context of the listing; [0014, 0040, & 0042]

        assigning an expected performance for the listing based on the location, wherein the

expected performance comprises at least one of a user defined expected CTR and context of the

listing; [0014 & 0042]

        said first computer comparing to the actual performance to the expected performance for

the listing. [0042 and [0043]

        promoting the set of listing to a more prominent location when the overall performance

indicates that overall the actual performances of the listings in the set of listings are better than

the expected performances [0042, 0049]

     demoting the listing to a less prominent location when the actual performance is poorer

than the expected performance; [0042, 0049]

and displaying the listing at the more prominent location or at the less prominent location. (Fig.

5, item 618a would be the more prominent location and item 618c would be the less prominent

location) but does not explicitly disclose a set of listings and wherein the set of listings includes a

plurality of listings.

     However McElfresh discloses a set of listings and wherein the set of listings includes a

plurality of listings. [0036]

     Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention, to have modified method of Kamangar as to include discloses a set of listings and

wherein the set of listings includes a plurality of listings, in order to provide a user a method of

judging the performance and also controlling the a set of listings.

     With respect to **Claim 2**: Kamangar discloses wherein assigning the expected

performance includes increasing the expected performance when the listing is in a more

prominent location, and decreasing the expected performance when the listing is in a less

prominent location. ([0043], reads that ads are ordered based on their scores, one of the

performance parameters used could be a customized click through rate as disclosed in [0042])

With respect to **Claims 3-6**: Kamangar discloses, wherein the listing is prominently located when it is included in the search result, wherein the listing is in a more prominent location located when it is located near the search term, wherein the listing is in a less prominent location when it is located in a sidebar on the Web page, wherein the listing is in a less prominent location when it is located separately from the search result. ([0051] & Fig. 6)

With respect to **Claim 7**: Kamangar discloses further comprising increasing the expected performance of the listing based on a context of the listing, wherein the context of the listing comprises factors that increase performance, including at least one of a position of the listing above other listings, a larger size of the listing relative to other listings, a distinctive formatting applied to the display of the listing, including a contrasting color, a highlighting, an animation, and a graphic, and a good performance of a neighboring listing. [0024, 0025, & 0028]

With respect to **Claims 8**: Kamangar discloses, further comprising decreasing the expected performance of the listing based on a context of the listing, wherein the context of the listing comprises factors that decrease performance, including at least one of a position of the listing below other listings, a smaller size of the listing relative to other listings, a lack of distinctive formatting applied to the display of the listing, and a poor performance of a neighboring listing. [0040]

With respect to **Claim 9:** Kamangar discloses, wherein the performance of a listing is a click-through rate, where the click-through rate is derived from a number of times the listing is displayed in the Web page as compared to a number of times the listing is clicked after being displayed. [0040]

With respect to **Claims 10**: Kamangar discloses, wherein the listing is an unpaid listing, and the expected performance is a threshold level that is tuned to optimize unpaid listing relevance. [0041, 0052]

With respect to **Claim 11:** Kamangar discloses, wherein the listing is a paid listing that generates advertising revenue each time it is clicked, and the expected performance is a threshold level that is tuned to optimize paid listing revenue. [0041 and 0044]

With respect to **Claim 12:** Kamangar discloses, wherein the expected performance of a listing is a threshold performance level that is tuned to a particular market. [0025 & 0028]

With respect to **Claim 13:** Kamangar discloses, wherein the performance of a listing is based on an overall performance of a set of listings to which the listing belongs, and promoting and demoting the listing includes promoting and demoting the set of listings based on the overall performance. [0043]

With respect to **Claim 14:** Kamangar discloses, wherein the overall performance of the set of listings is based on the expected performance of each listing in the set, wherein the expected performance varies based on a position of each listing within the set. [0041-0044])

With respect to **Claim 15:** Kamangar discloses, wherein the actual performance is better than the expected performance when the actual performance substantially exceeds the expected performance, and poorer when the actual performance falls substantially short of the expected performance. [0040-0043]

Claim Rejections - 35 USC § 103

10.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11.   Claims 16 – 32, 34 – 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamangar US (2003/0046161) in view of Meisel et al (2003/0033292)

With respect to **Claim 16:** Kamangar discloses, a search results optimization system comprising: a performance measurement process to measure an actual performance of a listing appearing in a search results Web page against an expected performance level, wherein the actual performance comprises at least one click-through rate(CTR) and context of the listing and

a listing placement process to promote the listing to the more prominent location when the actual

performance measures higher than the expected performance level, and to demote the listing to

the less prominent location when the actual performance measures lower than the expected

performance level; and a displaying process to display the listing at the more prominent location

or at the less prominent location (Kamangar [14, 30, 38, 40-43]) but does not explicitly disclose

where the expected performance level comprises a user defined expected CTR that is adjusted

based on whether the listing appears in a more prominent or less prominent location.

However Meisel discloses where the expected performance level comprises a user

defined expected CTR that is adjusted based on whether the listing appears in a more prominent

or less prominent location [0075]

Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention, to have modified method of Kamangar as to include where the expected

performance level comprises a user defined expected CTR that is adjusted based on whether the

listing appears in a more prominent or less prominent location, in order to provide a user a

method of judging the performance and also controlling the advertisements based on said

performance.

With respect to **Claim 17**: Kamangar discloses, wherein to measure an actual

performance includes capturing a number of impressions of a listing and a number of clicks on a

listing, and a current location of the listing relative to a location of the search results on the Web

page. [0014, 0026]

With respect to **Claim 18:** Kamangar discloses, wherein the more prominent location is a location in which a listing is expected to receive a greater number of clicks than that received in the less prominent location. [0044]

With respect to **Claims 19-21, & 34-37:** Kamangar discloses, wherein the listing is prominently located when it is included in the search result, wherein the listing is in a more prominent location located when it is located near the search term, wherein the listing is in a less prominent location when it is located in a sidebar on the Web page, wherein the listing is in a less prominent location when it is located separately from the search result. ([0051] & Fig. 6)

With respect to **Claim 22:** Kamangar discloses, wherein the expected performance levels in the performance settings repository are tuned to optimize at least one of advertising revenue and search result relevance. ([0030] & Fig2)

With respect to **Claim 23:** Kamangar discloses, wherein the performance measurement process takes a context of the listing into consideration when measuring the actual performance of the listing against the expected performance level for the listing. [0025 & 0040]

With respect to **Claim 24:** Kamangar discloses, wherein the context of the listing comprises factors that increase performance, including at least one of a position of the listing above other listings, a larger size of the listing relative to other listings, a distinctive formatting

applied to the display of the listing, including a contrasting color, a highlighting, an animation, and a graphic, and a good performance of a neighboring listing, and factors that decrease performance, including at least one of a position of the listing below other listings, a smaller size of the listing relative to other listings, a lack of distinctive formatting applied to the display of the listing, and a poor performance of a neighboring listing. [0025, 0028, 0040, 0049]

With respect to Claim 25: Kamangar discloses the system computer-readable media of Claim 16, wherein the actual performance measures higher than the expected performance level when the actual performance is substantially greater than the expected performance, and measures lower when the actual performance is substantially less than the expected performance. [0040-0043]

With respect to **Claim 26:** Kamangar discloses, one or more computer-accessible media having instructions for facilitating the optimal placement of search result listings in a search result user interface, the instructions comprising:

   placing a listing for a search result in an initial location based on an expected click-through rate (CTR); (Kamangar [43])

   capturing an actual CTR of the listing; (Kamangar [40]) but does not explicitly disclose

   normalizing the actual CTR based on the location;

   and promoting the listing to a more desirable location when the normalized CTR is better than the expected CTR, and demote the listing to a less desirable location when the normalized CTR is worse than the expected CTR.

However Meisel discloses normalizing the actual CTR based on the location;[0088] and promoting the listing to a more desirable location when the normalized CTR is better than the expected CTR, and demote the listing to a less desirable location when the normalized CTR is worse than the expected CTR. [0079 & 0081]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention, to have modified method of Kamangar as to include normalizing the actual CTR based on the location; and promoting the listing to a more desirable location when the normalized CTR is better than the expected CTR, and demote the listing to a less desirable location when the normalized CTR is worse than the expected CTR, in order to provide current statistical information that will reflect normalized results, since .

With respect to **Claim 27:** Kamangar and Meisel discloses, the computer-accessible media of claim 26, Kamangar further teaches wherein capturing an actual CTR of the listing includes capturing a location of the listing when it was clicked, [0035, 0040] but does not explicitly disclose the instruction to normalizing the actual CTR adjusts the CTR down when the location has a positive influence on CTR, and adjusts the CTR up when the location has a negative influence on CTR. (Kamangar [35-38, 40] Fig.4)

However Meisel discloses the instruction to normalize the actual CTR is to adjust the CTR down when the location has a positive influence on CTR, and to adjust the CTR up when the location has a negative influence on CTR. [0078]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention, to have modified method of Kamangar as to include the instruction to normalize

the actual CTR is to adjust the CTR down when the location has a positive influence on CTR,

and to adjust the CTR up when the location has a negative influence on CTR, in order to provide

a user with a normalized CTR with out the influences of the location that could be used to give

inaccurate results and thereby giving a user a more effective method of analyzing the

performance of the advertisements.

     With respect to **Claim 28:** Kamangar and Meisel discloses, the computer-accessible

media of claim 26 Kamangar further discloses capturing a context of the listing when it was

clicked, ([0025, 0026 & 0040]) but does not explicitly disclose wherein normalizing the actual

CTR includes normalizing the actual CTR based on the context.

     However Meisel discloses wherein normalizing the actual CTR includes normalizing the

actual CTR based on the context. [0074]

     Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention, to have modified method of Kamangar as to included wherein normalizing the

actual CTR includes normalizing the actual CTR based on the context, in order to provide an

accurate CTR that would be used to judge the performance of the listing.

     With respect to **Claim 29:** Kamangar discloses, wherein the context of the listing

comprises factors that influence performance, including at least one of a position of the listing

relative to other listings appearing in the search results user interface, a size of the listing relative

to other listings, a presence or absence of distinctive formatting applied to the display of the

listing relative to the other listings, including a contrasting color, a highlighting, an animation,

and a graphic, and a CTR of an adjacent listing. [0024, 0025, & 0028]

With respect to **Claim 30:** Kamangar discloses, wherein the listing is a pay-per-click

listing and the expected CTR is set to optimize revenue earned from the listing. [0014 & 0046])

With respect to **Claim 31:** Kamangar discloses wherein the listing is an unpaid listing

and he expected CTR is set to optimize relevance of the placement of the search result listing.

[0051]

With respect to Claim 32: Kamangar discloses, one or more computer-accessible media

having computer-executable instructions embodied thereon that, when executed, cause a

computing device to perform for performing a method for displaying on a display device a

search result Web page for a search term query, the search result Web page including at least two

sections in which to display a search result listing, the at least two sections including a first

section one section located in a more prominent area of the display device and a second section

located in a less prominent area of the display device, the method comprising:

said computing device measuring an actual performance of the search result listing,

wherein the actual performance comprises at least one of CTR and context of the listing; [0014

& 0040]

said computing device comparing the actual performance to the expected

performance; [0042 & 0043]

moving the listing to the more prominent first section when the actual performance is better than the expected performance; ([0042 & 0049], Fig. 6)

moving the listing to the less prominent second section when the actual performance is poorer than the expected performance; ([0042 &0049], Fig. 6) but does not explicitly disclose assigning an expected performance of a search result listing based on a user defined expected click-through rate (CTR) that is adjusted based on a location of the section in the Web page in which it appears;

displaying the listing in the more prominent first section or in the less prominent second section and wherein assigning the expected performance includes increasing the expected performance when the listing is in the more prominent first section and decreasing the expected performance when the listing is in the less prominent second section.

However Meisel discloses assigning an expected performance of a search result listing based on a user defined expected click-through rate (CTR) that is adjusted based on a location of the section in the Web page in which it appears;[0075] displaying the listing in the more prominent first section or in the less prominent second section and wherein assigning the expected performance includes increasing the expected performance when the listing is in the more prominent first section and decreasing the expected performance when the listing is in the less prominent second section. [0074]

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention, to have modified method of Kamangar as to have included assigning an expected performance of a search result listing based on a user defined expected click-through rate (CTR) that is adjusted based on a location of the section in the Web page in which it appears;

displaying the listing in the more prominent first section or in the less prominent second section

and wherein assigning the expected performance includes increasing the expected performance

when the listing is in the more prominent first section and decreasing the expected performance

when the listing is in the less prominent second section, in order to provide the user with a

method of insuring the listing is being placed in the most efficient location for said listing.

With respect to **Claim 34**: Kamangar discloses the computer-accessible media of

Claim32, wherein the more prominent first section includes the most relevant search result

listings. ([0049], Fig. 6)

With respect to **Claim 35**: Kamangar discloses the computer-accessible media of Claim

32, wherein the more prominent first section is located near a search term entry associated with

the search result listings. ([0049], Fig. 6)

With respect to **Claim 36**: Kamangar discloses the computer-accessible media of Claim

32, wherein the less prominent second section is located in a sidebar on the Web page. ([0049],

Fig. 6)

With respect to **Claim 37**: Kamangar discloses the computer-accessible media of Claim

32, wherein the less prominent second section includes less relevant search result listings than

the more prominent first section. ([0049], Fig. 6)

With respect to **Claim 38**: Kamangar discloses the computer-accessible media of Claim

32, further comprising increasing the expected performance of the listing based on a context of

the listing, wherein the context of the listing comprises factors that increase performance,

including at least one of a position of the listing above other listings, a larger size of the listing

relative to other listings, a distinctive formatting applied to the display of the listing, including a

contrasting color, a highlighting, an animation, and a graphic, and a good performance of a

neighboring listing. [0024, 0025, & 0028]

With respect to **Claim 39**: Kamangar discloses the computer-accessible media method of

Claim 32, further comprising decreasing the expected performance of the listing based on a

context of the listing, wherein the context of the listing comprises factors that decrease

performance, including at least one of a position of the listing below other listings, a smaller size

of the listing relative to other listings, a lack of distinctive formatting applied to the display of the

listing, and a poor performance of a neighboring listing. [0024, 0025, & 0028]

With respect to **Claim 40**: Kamangar discloses the computer-accessible media of Claim

32, wherein the performance of a listing is a click-through rate, where the click-through rate is

derived from a number of times the listing is displayed in the Web page as compared to a number

of times the listing is clicked after being displayed. [0040]

With respect to **Claim 41**: Kamangar discloses the computer-accessible media of Claim

32, wherein the listing is an unpaid listing, and the expected performance is a threshold level that

is tuned to optimize unpaid listing relevance. [0041, 0052]

With respect to **Claim 42**: Kamangar discloses the computer-accessible media of Claim

32, wherein the listing is paid listing that generates advertising revenue each time it is clicked,

and the expected performance is a threshold level that is tuned to optimize paid listing revenue.

[0041 & 0044]

With respect to **Claim 43**: Kamangar discloses the computer-accessible media of Claim

32, wherein the expected performance of a listing is a threshold performance level that is tuned

to a particular market. [0025 & 0028]

With respect to **Claim 44**: Kamangar discloses the computer-accessible media of Claim

32, wherein the performance of a listing is based on an overall performance of the section in

which the listing appears, and moving the listing includes moving all of the listings appearing in

the section based on the overall performance. [0043]

With respect to **Claim 45**: Kamangar discloses the computer-accessible media of Claim

44, wherein the overall performance of the first and second sections section is based on the

expected performance of each listing in the first and second sections section, wherein the

expected performance is based on where each listing appears within the first and second sections

section. ([0049], Fig. 6)

With respect to **Claim 46**: Kamangar discloses the computer-accessible media method of Claim 32, wherein the actual performance is better than the expected performance when the actual performance substantially exceeds the expected performance, and poorer when the actual performance falls substantially short of the expected performance. [0040 – 0043]

Response to Arguments

12.   Applicant's arguments filed November 12, 2009 have been fully considered but they are not persuasive.

In regards to the applicant's arguments regarding claim 1 are considered moot in light of the updated rejection above.

The applicant argues in regards to independent claim 16, 26 and 32 the promotion or demotion of a listing is independent of the promotion or demotion of another listing. For example in claim 16, taking two ads A and B and two placement positions 1 and 2, ad A could be promoted to position 1 and ad B could be promoted to position 1. However, by Kamangar ad A could be ranked in position 1 and ad B in position 2, or vice versa, but since ads A and B are ranked with respect to one another, ads A and B cannot be in the same position. The examiner respectfully disagrees and does not understand how two ads can occupy the same position. The Examiner notes that as previously stated in the previous office action, that the claim language states that the actual performance and the expected performance includes the **context of the listing**. The Examiner directs the applicant to the applicant's specification, the last sentence of

page 3 reads, "The listing's context may include a number of factors that are known to influence

performance, including the location of the listing, the amount of display area that the listing

occupies, **the neighboring listings**, and the display format characteristics…" The bolded section

of the previous sentence contradicts the applicants argument that the listing is promoted or

demoted based on the listing's own performance and that the listing is not dependent on the

performance of any other listing. See also page 8 of the specification that says stored

performance data may include adjacent listing performance data, and page 9 of the specification

that discusses the context of listing as including neighboring listings, where the listing

promoter/demoter process uses such data (e.g., performance and context) to promote/demote a

listing. As stated previously, Kamangar discloses ¶40, examples of a performance parameter

include a click through rate (i.e. actual performance comprising a click through rate), also

disclosed in ¶40, Kamangar discloses the user interest for the ad weighted for the size relative to

other ads(i.e. actual performance comprising a context of the listing). Kamangar also discloses

in ¶42, achieving desired results by way of customizing the performance parameters, said

parameters in this case the click through rate. As stated in the pervious office action ¶14 reads on

the context of the listing as being used as a performance parameter. Furthermore, as discussed

above in the 35 USC 112 rejections, the examiner does not find support that the promotion or

demotion is independent of the other neighboring listings.

Applicant submits that the dependent claims are allowable in view of Applicant's

arguments made in regard to the amended independent claims. For the same reasons above

regarding the amended independent claims, the Examiner respectfully disagrees.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to DARNELL POUNCIL whose telephone number is (571)270-

3509. The examiner can normally be reached on Monday to Thursday 8 to 5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert Weinhardt can be reached on (571)272-6633. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

| /D. P./ | /C. Michelle Tarae/ |
| Examiner, Art Unit 3688 | Primary Examiner, Art Unit 3688 |